

04-514

BELL, WARDEN V. THOMPSON, GREGORY

DECISION BELOW: 373 F.3d 688 (6TH Cir. 2004)

QUESTIONS PRESENTED

~~I. — By withholding issuance of its mandate affirming the denial of habeas corpus relief for more than six month beyond the time for mandatory issuance under Fed. R. App. P. 41(d)(2)(D) and then by issuing a new opinion and judgment remanding the case to the district court for further proceedings in light of materials contained in ,post judgment motion filed by the respondent under Fed R. Civ. P. 60(b), did the Sixth Circuit violate the terms of 28 U.S.C. §2244(b)?~~

II. Did the Sixth Circuit abuse its discretion by withdrawing its opinion affirming the denial of habeas corpus relief six months after Fed. R. App. P. 41(d)(2)(D) made issuance of the mandate mandatory, without notice to the parties or any finding that the court's action was necessary to prevent a miscarriage of justice, particularly where state judicial proceedings to enforce the inmate's death sentence had progressed in reliance upon the finality of the judgment in the federal habeas proceedings?

~~III. — By remanding the case for a "full evidentiary hearing on respondent's initial habeas corpus petition without any determination that the conditions prescribed in 28 U.S.C §2254(e)(2) were met, did the Sixth Circuit violate the terms of AEDPA and this Court's decision in *Williams v. Taylor*, 529 U.S. 420 (2000)?~~

Cert. Granted 1/7/05

Limited to Question 2 presented by the petition.